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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,143	03/06/2001	Ali S. Khayrallah	8194-477	4519
20792	7590	07/11/2006	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			CORRIELUS, JEAN B	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	

2611

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/800,143

Applicant(s)

KHAYRALLAH ET AL.

Examiner

Jean B Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-20, 22, 23, 26-43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-11 is/are rejected.
- 7) ☒ Claim(s) 12-20, 22, 23, 26-43 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 4-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Let's consider claim 4, the claim when taken as a whole is directed to a method of processing a signal. However, a claim directed to signal per se is an abstract idea therefore non-statutory. The Interim Guidelines for examination of Patent Applications for Patent subject matter Eligibility" provides that for claims including such excluded matter to be eligible, the claim must be for a practical application of the abstract idea. The claim fails to provide a practical application of the abstract idea because the claimed invention does not transform an article or physical object to a different state or thing nor the claimed invention otherwise produces a useful concrete and tangible result. Note that the claim fails to provide a practical application that produces a practical result because the final result achieved by the claimed invention is not useful tangible and concrete. Hence it is concluded that the claim is non-statutory.

Claims 3-11 fail to cure the deficiency noted in the base claim, they are likewise rejected.

### ***Response to Arguments***

2. Applicant's arguments filed 6/13/06 have been fully considered but they are not persuasive. It is alleged that the claims recite methods that accomplish a practical application, namely selecting a frequency hopping mode for transmission of a

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communication in a communication system". However it is noted that the body of the claim does not include a limitation to a **communication system**. Such reference to the **communication system** is only part of the preamble. However, because the body of the claim does not refer to such limitation recited in the preamble, the preamble is not given any patentable weight. It is suggested that the body of the claim be amended to include such a limitation. It is further alleged that determination must be made as to whether the claims fall within a judicial exception to statutory subject matter such as law of nature, mathematical algorithms or natural phenomena before a rejection under 35 USC 101 can be made. However it is noted that such determination was made in section 2 of the last office action. As noted, in section 2 the claim when taken as a whole is only directed to a method of processing a signal. The claim however fails to provide a practical application of the final result because the claim fails to include any limitation to a practical application. In addition applicant argued that the ability to communicate between remote locations and to understand the received communications depends on various aspect of encoding such as the selection hopping mode as recited in claim 4. However it is noted that the claims do not include any limitations to a communication established between **remote locations**. Applicant further alleged that the claims define a further practical result because the claims recite "transmitting a communication packet". However, it is noted that "transmission of a packet" is just transmitting "a signal" per se and therefore such a limitation can't be considered as providing a practical application. Note that the rejection of claims 12-20 has been withdrawn because as noted by applicant claim 12 recites packets are

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"transmitted over **the communication system**". Such limitation defines a practical application.

***Allowable Subject Matter***

4. Claims 12-20, 22, 23, 26-43 and 45 are allowed.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean B. Corrielus whose telephone number is 571-272-3020. The examiner can normally be reached on Maxi-Flex.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jean B Cornelius  
Primary Examiner  
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7-7-06